IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 19 of 1995
With
CIVIL APPLICATION No. 110 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

O.N.G.C. & 1 - Appellant(s)
Versus
M.S. SAXENA & 4 - Respondent(s)

==========

Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
MR HB SHAH for Respondent(s) : 1,
MR SA DESAI for Respondent(s) : 2 - 3.
RULE SERVED for Respondent(s) : 4 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 14/09/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgment delivered in Special Civil Application No. 4030/82 dated 5th August, 1994, this Letters Patent Appeal has been filed by original respondents Nos. 1 and 2, under whom original petitioners Nos. 1, 2 and 3 had been employed.

2. The facts giving rise to Special Civil Application No. 4030/82, in a nutshell, are as under:

2.1 For the sake of convenience, the parties have been described as arrayed in the petition.

2.2 Petitioners Nos. 1, 2 and 3 were appointed as Production Operators on ad hoc basis on 11th October, 1972, 22nd September, 1972 and 10th September, 1972, respectively, and after undergoing regular process of selection, they were given regular appointment in the said cadre on 24th November, 1973, 27th September, 1973 and 9th October, 1973, respectively. The case of the petitioners in the writ petition was to the effect that though they had been appointed prior in time on ad hoc basis on 11.10.1972, 22.9.1972 and 10.9.1972, original respondents Nos. 3 and 4, who had been appointed on regular basis in the cadre of production operator on 25.10.1972 and 28.10.1972, respectively, the said respondents were shown as senior to the petitioners. Relevant details with regard to seniority and dates of appointment of the

petitioners and respondents Nos. 3 and 4, in a tabular form, are given hereinbelow.

Name of the Employee	Date of ad-hoc appointment	Date of regular appointment	No. in seniority list of production Operators
M.S. Saxena (Pet. No. 1)	11.10.72	24.11.73	400
V.P. Saxena (Pet. No. 2)	22.09.72	27.09.73	404
M.S. Pradhan (Pet. No. 3	10.10.72	09.10.73	402
N.K. Charan (Res. No. 3)	-	25.10.72	299
H.P. Mishra (Res. No. 4)	-	28.10.72	308

2.2 According to the petitioners, as they had been appointed on ad hoc basis much earlier than respondents Nos. 3 & 4, the period during which they worked on ad hoc basis should have been taken into account for the purpose of fixing seniority and they should be deemed to have been continuously officiating in the cadre of production operator from the day on which they had been appointed on ad hoc basis. It is not in dispute that the petitioners had been appointed on ad hoc basis before respondents Nos. 3 and 4 had been appointed on regular basis and it is also not in dispute that regular appointment of the petitioners had taken place after respondents Nos. 3 and 4 had been given regular appointment. Thus, the question, which was to be decided by the learned single Judge was, whether the period during

which the petitioners worked on ad hoc basis can be treated as service for the purpose of their seniority.

2.3 After considering the submissions made on behalf of the learned advocates and upon perusal of the record, the learned single Judge came to the conclusion that the petition was required to be accepted for the reason that the petitioners' services during the period of ad hoc appointment should have been clubbed with the regular service and, therefore, they should have been shown senior to respondents Nos. 3 and 4 in the seniority list prepared by respondent No.1-employer. The learned single Judge also relied upon certain judgments of the Hon'ble Supreme Court while dealing with ad hoc appointment of the petitioners.

3. Learned advocate Shri R.H. Mehta appearing for respondent No. 1 employer has submitted that the petitioners had been given regular appointment after respondents Nos. 3 and 4 had been given regular appointment and, therefore, the petitioners cannot steal a march over respondents Nos. 3 and 4 in the matter of seniority. He has submitted that according to regulation 19D of the ONGC (Terms and Conditions of Appointment and Service) Regulation, 1975 (hereinafter referred to as 'the Regulations'), the petitioners are not entitled to seniority on and from the date of their ad hoc appointment.

4. Thereafter he has submitted that by allowing the petition, the learned single Judge has violated the rights of more than 90 production operators of the appellant Corporation because, by virtue of the impugned judgment, the petitioners would be placed above those production operators in the seniority list of operators even though they had not been heard by the learned single Judge.

5. It has been thereafter submitted that even the appointment orders, whereby the petitioners had been given ad hoc appointments, clearly reveal that their appointments were purely on ad hoc basis and by virtue of their appointment, they were not to be treated as regularly employed production operators. He has submitted that clauses 2 and 6 incorporated in the appointment orders, whereby ad hoc appointments were given to the petitioners, had not been duly considered by the learned single Judge. He has further submitted that the learned single Judge did not appreciate the ratio of the judgments relied upon by him in its correct spirit. In view of the fact that there are statutory rules determining seniority, the learned single Judge could not have ignored the said statutory rules or could not have passed the order without setting aside the statutory rules determining seniority of the employees.

6. On the other hand, learned advocate Shri Satyajit Desai appearing for the petitioners has submitted that the judgment delivered by the learned

single Judge is just, legal and proper and it requires no interference.

7. It has been submitted by him that clause 2(i)(iii) of the appointment order dated 25.9.1972, whereby ad hoc appointment had been given to one of the petitioners, clearly reveals that though the ad hoc appointment was given for a period of 6 months, the said petitioner was to continue on probation for one year from the date of his appointment and in fact the said petitioner had worked for more than one year and, therefore, it is to be presumed that he was given regular appointment. He has further submitted that as the petitioners had continuously worked in the cadre of production operator from the date of their initial appointments, on the principle of continuous officiation, the date on which they were initially appointed should be considered for their seniority and as respondents Nos. 3 and 4 had been appointed later in point of time, the learned single Judge was justified in coming to the conclusion that the petitioners were senior to respondents Nos. 3 and 4.

8. According to him, the term 'ad hoc' used in the appointment order was in fact a misnomer. In fact, the petitioners had been appointed on probation and upon completion of the period of probation, the dates on which they were initially appointed on ad hoc basis would become dates of their regular appointments.

9. He has relied upon the judgment delivered in the case of **Rajbir Singh v. Union of India**, AIR 1991 SC 518 so as to substantiate that the petitioners should have been shown senior to respondents Nos. 3 and 4 in view of their ad hoc appointments, which were prior in time.

9. Learned advocate Shri Desai appearing for the petitioners has also relied upon the judgment delivered in the case of **I.K. Sikhija and others v. Union of India and others**, (1997) 6 SCC 406, which has observed that length of service should be looked into for the purpose of considering seniority of an employee.

10. We have heard the learned advocates and have gone through the pleadings. We have also perused the judgments delivered by Hon'ble Supreme Court on the subject-matter.

11. It is pertinent to note that the respondent employer has framed regulations for the purpose of determining seniority of its employees. Clause D of regulation 19 of the Regulations, which pertains to seniority of ad hoc employees, is reproduced hereinbelow.

> **“D. Ad hoc appointments**:
>
> Persons appointed or promoted to a grade on ad hoc basis shall be replaced by candidates approved for regular appointment or promotion as

> soon as possible. In the event of regularisation of their appointments they shall take their place in the seniority list with reference to their regular selection or promotion.

The aforesaid regulation has not been challenged by the petitioners and even the learned single judge has not held that the said regulation is bad in law. Thus, one has to consider the said regulation for the purpose of determining seniority of the petitioners and respondents Nos. 3 and 4. It is crystal clear from regulation 19D of the Regulations that the persons appointed in any cadre on ad hoc basis are to be replaced by candidates approved for regular appointment as soon as possible and in the event of regularisation of appointment of any ad hoc appointee, he will be placed in the seniority list from the date of his regular appointment. It is not in dispute that the three petitioners, who had been appointed on ad hoc basis in the months of September and October, 1972, had been given regular appointment on 24.11.1973, 27.9.1973 and 9.10.1973, respectively, whereas respondents Nos. 3 and 4 had been given regular appointment on 25.10.72 and 28.10.72, respectively. Thus, it is very clear that so far as regular appointments are concerned, respondents Nos. 3 and 4 were appointed prior in time than the petitioners.

12. In view of the above-referred regulation 19D, the petitioners cannot be said to be senior to

respondents Nos. 3 and 4 because they were given regular appointments after respondents Nos. 3 and 4 had been given regular appointment. We do not know the circumstances in which the petitioners were given ad hoc appointments at an earlier point of time but we believe that in the interest of administration, without asking the petitioners to go through the regular channel of appointment, they might have been given ad hoc appointments and subsequently, upon being interviewed, they must have been found suitable and, therefore, they must have been given regular appointments. Before they were given regular appointments, respondents Nos. 3 and 4 had already been given regular appointments in the cadre of production operator and, therefore, looking to the aforesaid provisions of regulation 19D, the petitioners cannot claim seniority over respondents Nos. 3 and 4.`

13. We are in agreement with the submission made by learned advocate Shri R.H. Mehta to the effect that if the petitioners are to succeed, right of several employees, who are above the petitioners in the cadre of production operator, would be adversely affected because the petitioners would be placed above respondents Nos. 3 and 4, who are at serial nos. 299 and 308, respectively, in the seniority list of production operator. The petitioners are at serial nos. 400, 404 and 402, respectively, in the seniority list of production operator as on 1.4.1979.

14. In our opinion, without hearing the persons who are admittedly senior to the petitioners, the petitioners cannot be put above respondents Nos. 3 and 4 in the seniority list. It is pertinent to note that the Hon'ble Supreme Court in the case of **M. Bheemaiah and others v. Dy. Commissioner of Excise, Hyderabad and others**, (2001) 10 SCC 567, has observed that even notional upgradation from an anterior date cannot be given because that would adversely affect inter se seniority of others, if they had not been impleaded as parties. Even in the instant case, the persons, who are likely to be adversely affected because of change in the position of the petitioners in the seniority list, were not before this court. In view of the said fact, it was not proper to allow the petition without hearing the persons, who were likely to be adversely affected, by allowing the petition.

15. So far as the appointment orders of the petitioners are concerned, we are of the view that clause 6 in each appointment order, whereby the petitioners had been appointed on ad hoc basis, has not been duly considered. Clause 6 of the appointment order reads as under:

> "6. The conditions given at Sl. 2(ii) and 2(iii) will be applicable w.e.f. and if he is declared regular in the post. Until regular appointment his services can be terminated at any time without notice and reason."

By virtue of the aforesaid clause 6, the conditions incorporated in the ad hoc appointment order in clause 2(ii) and (iii) would not have applied to the petitioners till they were given regular appointment because the petitioners had been given appointment on ad hoc basis. The conditions on which the learned single Judge had relied upon, were applicable to those who were given regular appointment. Clause 2(iii), reads as under:

> "(a) He will be on probation for a period of one year from the date of appointment. This period may be extended at the discretion of the appointing authority, if necessary. During the period of probation, the services are liable to be terminated at any time without notice, and/or assigning any reasons whatsoever.
>
> (b) The above appointment is further subject to the terms and conditions of a bond of Rs. 1000/- executed by him at the time of his admission in ONGC as Trainee."

Upon bare perusal of the said clause, it is clear that the employee, who has been referred to in the said clause, is the one who was given regular appointment. The orders, which had been made while giving ad hoc appointments to the petitioners, were framed in such a manner that they could have been

used for the ad hoc appointees as well the as regular appointees. Clause 2(ii) and clause 2(iii) were to be made applicable only to those who were given regular appointments because it has been clearly stated in clause 6 that the aforesaid two clauses would be applicable with effect from the date on which the candidate is declared regular in the post in the cadre. The petitioners were declared regular or, in other words, they were given regular appointments on 24.11.1973, 27.9.1973 and 9.9.1973, respectively, and upon getting regular appointment, the petitioners were given other appointment orders, which are at Annexures H1, H2 and H3 to the affidavit-in-reply. Had the petitioners been given regular appointments earlier, it was not necessary for the employer Corporation to give other appointment orders to them. Mere fact that fresh appointment orders were given upon their being given regular appointments, distinguishes the fact with regard to ad hoc and regular appointment. In the circumstances, we do not agree with the view expressed by the learned single Judge that by virtue of the ad hoc appointment, the petitioners would be treated as regular employees in the cadre of production operator with effect from the dates on whch they were appointed on ad hoc basis.

16. The learned single Judge has relied upon the judgment delivered in the case of **Rajbir Singh** (supra) and in the case of **Direct Recruit Cass II**

Engg. Officers' Association v. State of Maharashtra, AIR 1990 SC 1607 so as to come to the conclusion that upon being given ad hoc appointment, the petitioners should be treated as regularly appointed employees. Facts of the instant case are different because regulation 19D clearly lays down the manner in which seniority of the employees is to be determined and, therefore, the petitioners would not be entitled to have any benefit of their services rendered as ad hoc employees.

17. It is also pertinent to note that the judgment delivered in the case of **Direct Recruit Class II Engg. Officers' Association** (supra) had been duly considered by the Hon'ble Supreme Court in the case of **Santosh Kumar and others v. G.R. Chawla and others**, 2003 10 SCC 513, and the Hon'ble Supreme Court finally came to the conclusion that judgment of the High Court was right when it considered the fact that looking to the rules of seniority, it was clear that seniority was to reckon only from the date of substantive appointment. Even in the instant case, looking to the provisions of regulation 19D of the Regulations, it is clear that the date of ad hoc appointment was to be ignored and the date on which regular appointment was made had to be considered for the purpose of considering seniority of the concerned employee.

18. For the aforesaid reasons, we are of the view that the petitioners could not have been given

seniority over respondents Nos. 3 and 4 and the view expressed by the learned single Judge is not correct.

19. The appeal is, therefore allowed. The judgment dated 5th August, 1994 passed in Special Civil Application No. 4030/82 is quashed and set aside. Seniority of the petitioners shall be considered in the cadre of production operators only from their respective date of regular appointment in the said cadre. There shall be no order as to costs.

20. In view of dismissal of the appeal, the civil aplication does not survive and it is disposed of accordingly. Ad-interim relief granted earlier stands confirmed.

(Anil R. Dave, J.)

(H.N. Devani, J.)

(hn)